

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

CONTINENTAL OPTRONICS, INC.

Employer

and

Case No. 31-RC-7892

UNITED INDUSTRIAL, SERVICE
TRANSPORTATION, PROFESSIONAL
& GOV'T WORKERS OF NORTH
AMERICA, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{1/}
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act^{2/}:

INCLUDED: Full-time and regular part-time cable cutting, assembly, polishing, testing, and shipping employees employed by the Employer at its facilities located at 1921 North Gaffey Street and 1931 North Gaffey Street, San Pedro, California.

EXCLUDED: Office clerical employees, professional employees, all other employees, guards, and supervisors, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by UNITED INDUSTRIAL, SERVICE TRANSPORTATION, PROFESSIONAL & GOV'T WORKERS OF NORTH AMERICA AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that an election eligibility list, containing the **FULL** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before **July 26, 2000**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by facsimile, in which case no

copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW ^{3/}

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **August 2, 2000.**

DATED at Los Angeles, California this 19th day of July, 2000.

/s/ James J. McDermott
James McDermott, Regional Director
National Labor Relations Board
Region 31

FOOTNOTES

- 1/ The parties stipulated, and I find, that the Employer, Continental Optronics, Inc., is a California corporation with a principal place of business located in San Pedro, California, where it is engaged in the assembly of fiber optic cables, and during the past 12 months, a representative period, the Employer has purchased goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of California. The Employer thus satisfies the statutory jurisdictional requirement as well as the Board's discretionary standard for asserting jurisdiction herein. *Pioneer Concrete Co.*, 241 NLRB 264, 265 (1979), *enfd. sub nom.*, *NLRB v. Maxwell*, 637 F.2d 698 (9th Cir. 1981).
- 2/ The parties stipulated to the description of the unit and its appropriateness for the purpose of collective bargaining. Only one issue was raised in the hearing: whether one employee, Blanca Canjura, informally called a supervisor by the Employer and herein referred to Canjura, is a supervisor within the meaning of the Act. The Employer contends that Canjura is a statutory supervisor and should be excluded from the unit. The Petitioner contends that Canjura is not a supervisor within the meaning of the Act and therefore should be included in the unit. I will address that issue after a brief overview of the factual and legal underpinnings of the dispute.

FACTUAL BACKGROUND

Since 1990, the Employer has been in the business of assembling fiber optic cables. It maintains a 5,000 square foot facility in San Pedro and recently opened a smaller facility directly across the alley. The Employer employs approximately 40 employees at its facilities, with approximately 25 employees working on an assembly line for the cables. In the last twelve months, the Employer has experienced rapid growth in its workforce. The Employer's

facilities contain the assembly line, testing and shipping, and administrative offices. Orders for cables are received in the offices and brought to the assembly line. After the cables are assembled on the line, they are sent to testing and shipping.

The employee in question, Blanca Canjura, was the second employee hired by the Employer and is referred to as a supervisor despite the fact that the Employer does not maintain formal job titles. Canjura reports directly to the President and oversees the work of approximately 25 employees who perform different tasks on the assembly line. She is responsible for ensuring that orders are processed on time and assigns specific job orders to individual assembly line employees. Canjura spends approximately 50% of her time working on the assembly line and performing the same tasks as those employees she oversees.

At each step of the assembly process, Canjura determines the individuals at each station who will receive the orders. Canjura shepherds the orders through the assembly process: she brings the cable ends to the cutters for cutting; assigns strippers to strip the outer jacket and the fiber of the cable; assigns other employees to cleave and hand sand the cables before she assigns the job to the polishers based upon the abilities of the polishing employees. Because not all polishers can do each type of polish, Canjura assigns the individual jobs to the polishers who are qualified to perform the required polishing. Canjura knows the skills of the employees who work on the assembly line because she has trained them or assigned trainers to them. When priority orders are received, Canjura “pushes” them through the line by assigning the tasks to the quicker and more skilled workers to ensure that the order is completed on time.

Canjura assigns new employees to work as cable cutters, the least skilled of the tasks on the assembly line. Canjura tries employees out in the different positions in her department. When the President informed Canjura that he wished to have an additional polisher, Canjura determined which employee to move to the

polishing station with no further review from the President. This reassignment did not result in a change of pay for the employee. No paperwork is completed and the no change is made in the Employer's records when Canjura assigns employees to a different position.

On almost a daily basis, the shipping department requires additional help and a shipping department employee or the accountant/human resources manager will ask Canjura if she can send some assembly line workers to the shipping department. Canjura selects employees who are not working on current orders and sends them to the shipping department to help ship the orders out.

The President believes that Canjura has the authority to discipline and effectively recommend discharge. No employee has ever been discharged by the Employer. The only disciplinary action discussed in the record was issued by the President. In that situation, Canjura told the President that two employees were working too slowly and that he should talk to them. The President brought the employees into his office to speak with them about their performance and issued a written warning. It was the President's decision to issue the warning and he did so without independently investigating the employees' alleged misconduct.

The President tells Canjura when the Employer needs additional employees. Canjura tells the other employees to try to bring in friends. Canjura then brings people to the Employer and they are summarily hired after completing appropriate paperwork. The Employer does not independently interview the employees that Canjura "brings in" before they begin work. Canjura communicates workers requests for raises to the President and accountant/human resources. The President and accountant/human resources take Canjura's evaluation of the employees' performance into account when determining raises.

Canjura is paid a salary unlike the other assembly line workers, who are paid on an hourly basis. Canjura makes approximately \$1 per hour more than the highest paid assembly line worker and approximately \$10,000 per annum less than

the head of the testing and shipping department. Canjura is eligible for overtime unlike the other salaried employees. Canjura received vacation before hourly employees were able to accrue vacation (the policy has recently been changed to allow hourly employees to accrue vacation). Canjura also received a merit bonus, that was only given to Canjura, the testing and shipping department manager and an engineer. Canjura meets with the President approximately once per month to discuss employees, how they're doing, and whether they're upset about anything.

LEGAL BACKGROUND

Section 2(11) of the Act defines a statutory supervisor as:

. . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

These twelve §2(11) criteria are read in the disjunctive, so that the exercise of any one of them may warrant a finding of supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985), *enfd*, 794 F.2d 527 (9th Cir. 1986). However, §2(11) also contains the “conjunctive requirement that the power be exercised with ‘independent judgment,’ rather than in a ‘routine’ or ‘clerical’ fashion.” *Chevron U.S.A.*, 309 NLRB 59, 61 (1992). See also *Opelika Foundry*, 281 NLRB 897, 899 (1986) (the test is the significance of the judgment and directions). The party asserting that an individual is a supervisor has the burden of establishing such status. *Bennett Indus., Inc.*, 313 NLRB 1363 (1994); *Tucson Gas & Elec. Co.*, 241 NLRB 181 (1979). The Board refrains from construing supervisory status too broadly, because the inevitable consequence of such construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co., Inc.*, 308 NLRB 101, 102 (1992).

In 1994, the Supreme Court determined that § 2(11) requires the resolution of three questions; and each must be answered in the affirmative if an employee is to be deemed a supervisor.” *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). The three questions are:

- 1) does the employee have the authority to engage in one of the twelve activities set forth in the body of § 2(11)?;
- 2) does the exercise of that authority require the use of independent judgment?; and
- 3) does the employee hold the authority in the interest of the employer?

ANALYSIS

Canjura’s Authority to Engage in the Activities Set Forth in Section 2(11)

The first question is whether Canjura’s has the authority to engage in one of the twelve enumerated activities set forth in the body of §2(11) of the Act.. Based on the description of Canjura’s duties contained in the record and as outlined above, I find that there is no evidence to support a finding that Canjura had the authority to suspend, lay off, recall, promote, discharge, reward employees or to adjust employee grievances. Moreover, there is insufficient evidence in the record to support the Employer’s contention that Canjura had the authority to effectively recommend discipline and discharge. There is no evidence in the record that Canjura was ever informed of her authority to effectively recommend discipline and discharge, and the record reflects no instance where Canjura effectively recommended discharge of an employee.

Similarly, the record contains little evidence that Canjura ever recommended discipline of an employee. While the Employer contends that Canjura initiated discipline on 5 occasions, this conclusion is not supported by record. Rather, when asked whether Canjura had been involved in *any* of the 5 written warnings issued by the Employer, the President responded that she had.

The Employer provided evidence of her involvement in only one incident. In that instance, Canjura complained to the President about two employees working too slowly and requested that he speak to them. The President issued a written warning to the employees which he acknowledged to be his own determination. Because Canjura made no specific recommendation about discipline, the evidence is insufficient to establish that Canjura had the authority to effectively recommend discipline.

Based on the record and Canjura's duties as described above, I find that Canjura did engage in two of the activities enumerated within §2(11) of the Act. First, the record reflects that Canjura hires employees, or at the very least, effectively recommends the hiring of employees. The Employer contacts Canjura when it wishes to hire additional employees and summarily hires the employees she "brings in." Second, the Employer's uncontradicted testimony establishes that Canjura regularly assigns work to other employees and moves employees between the different stations on the line in her discretion.

The exercise of such responsibility, however, will not dictate a finding that Canjura is statutory supervisory if the duties are "routine" or "clerical" in nature. Rather, her authority must be exercised in a manner that requires the use of independent judgment and must be held in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994).

Canjura's Authority is Exercised Using Independent
Judgment and Held in the Interest of the Employer

The record evidences that Canjura plays an important role in the Employer's hiring practices. Canjura "brings the people in" who the Employer hires as soon as they complete paperwork. When Canjura brings in an applicant, "the first thing they do is go to [human resources] to fill out the paperwork, their social security number, their green card, et cetera, et cetera, and they go right to

work.” Canjura has regularly exercised this authority in the past twelve months and the assembly line has grown from an average of 10 employees to approximately 25. The Union argues that Canjura exercises no independent judgment in this process because she merely asks other employees to bring in friends who might be interested in working. I disagree.

The record reflects that Canjura is the gatekeeper for the hiring process. The President does not announce job openings to all employees, but rather speaks only to Canjura. Moreover, Canjura is the employee who brings in the applicants to the attention of the Employer. Because there is no independent interview by any other person in management, Canjura’s decision to “bring in” an employee is tantamount to an offer of employment. Significantly, Canjura’s decisions about which applicants to bring in are not scrutinized or questioned by management--human resources’ involvement is merely clerical and does not constitute independent review by management. Canjura’s authority to hire applicants without consulting with her supervisor, “prima facie implies the authority to hire on the basis of independent judgment . . .” *Top Job Building Maintenance Co.*, 304 NLRB 902, 904 (1991).

At a minimum, Canjura’s role in the hiring process amounts to effectively recommending applicants for hire. Canjura’s decisions regarding which applicants to “bring in” directly results in their employment. Conversely, Canjura’s decision not to bring an employee to the Employer’s attention would result in a denial of employment. This effective recommendation of employees for hire evidences independent judgment in the interest of the employer and is indicative of supervisory status. *Queen Mary*, 317 NLRB 1303, 1303 (1995), enfd. sub nom., 113 F.3d 1242 (9th Cir. 1997). *See Brown Transport Corp.*, 296 NLRB 552, 553 fn.10 (1989) (individual found to be supervisor based upon effectively recommending two hires, receiving salary rather than hourly pay, and holding a supervisory job title); *Detroit College of Business*, 296 NLRB 318, 319 (1989)

(department coordinators who participated in a joint effort with management with respect to hiring were supervisors). Based solely on the above, I believe the record supports a finding of Canjura's supervisory status. Other factors set forth below further support the conclusion that Canjura is a statutory supervisor.

As discussed *supra*, Canjura oversees the work of approximately 25 employees and routinely assigns work to these employees. The uncontested evidence in the record reveals that Canjura determines which employees on the assembly line will work at the different positions (i.e., cutter, cleaver, stripper, polisher, etc.). While new employees begin working as cutters, Canjura exercises her authority to "move[] them up and tr[y] them" in the different positions on the assembly line. When priority orders come in, Canjura decides how to best "push" the order through the line by assigning the jobs to the fastest and most skilled workers. Canjura decides to reassign or transfer employees to fill positions when employees are absent. Canjura has sole responsibility for these determinations because the upper managers "don't know the [employees'] skills." When the President informed Canjura that an extra polisher was needed on the line, she used her discretion to pick which employee to reassign. *Opelika Foundry*, 281 NLRB 897, 901 (1986) (individual who prioritized job orders, made work assignments, gave orders to three employees and was responsible for seeing work was satisfactory, was supervisor). Based on the foregoing, I find that Canjura exercised independent judgment in the interest of her employer when assigning work to other employees.

The cases relied upon by the Union to support its contention that Canjura did not exercise independent judgment in the performance of her duties are distinguishable from the present situation. In *Carlisle Engineered Products, Inc.*, 330 NLRB No. 189, 164 LRRM 1142, 2000 WL 569474 (N.L.R.B.) (2000), the processor only "occasionally" directed operators to move to another machine or to clean up if the operator's machine needed adjustment or repair. The Board found

that “this limited and routine assignment function is not comparable to the general assignment authority exercised by admitted supervisors when making initial work assignments.” *Id.* at 2000 WL 569474, *5, fn.3. Canjura, in contrast, assigned work to employees on a daily basis and routinely moved people between different positions.

Likewise, other cases cited by the Union upholding determinations that individuals who assigned work to other employees were not supervisors are factually distinct from the present case. In *Macro Pacific Development, Inc. v. NLRB*, the court found a waiter supervisor and bartender supervisor more akin to leadmen because they reported to “rigidly structured” management that continuously oversaw on-site operations and often overturned decisions regarding the assignment of work. 178 F.3d 1325, 1333 (D.C. Cir. 1999). Similarly, the court in *Providence Alaska Medical Center v. NLRB*, found that charge nurses did not exercise independent judgment in the assignment of tasks to particular employees because the assignments were made “within the parameters of the supervisory nurse’s monthly assignment schedule” and they were only in charge when the supervisory nurse was absent. 121 F.3d 548, 555 (9th Cir. 1997). In contrast, Canjura works with little or no oversight and assigns work to other employees on a routine basis. There is no rigid structure or close management oversight circumscribing Canjura’s authority. Rather than showing that the President closely oversees Canjura’s decisions, the record indicates that the Employer relies on Canjura to make these determinations because she is familiar with employees and their skills.

The Union’s reliance on *NLRB v. W.C. McQuaide, Inc.*, 552 F.2d 519, (3d Cir. 1977), is also misplaced. In that case, the court upheld a Board decision finding that an individual who assigned dock workers to unload delivery trucks was not a supervisor where the assignments were based on worker availability. While Canjura assigns workers to the shipping department in the afternoons based

on availability, she also makes ongoing job assignments and determines which employees should work in different positions on the assembly line. As discussed above, Canjura makes various other assignments based on other factors such as the priority of the order, the skills required for the position, or the necessity to fill in for absent employees. These types of assignments require independent judgment and are not comparable to decisions based only on employee availability.

Secondary Indicia of Supervisory Status Further
Support the Conclusion that Canjura is a Supervisor

Canjura's position is also imbued with many of the traditional secondary indicia of supervisory status. While the Union correctly contends that secondary indicia such as Canjura's status as a salaried employee are not sufficient to establish supervisory status standing alone, the Board considers secondary indicia that reinforce a finding of supervisory status in close cases. *NLRB v. Chicago Metallic Corp.*, 794 F.2d 527, 531 (9th Cir. 1986).

Canjura regularly attends management meetings with the President. She is paid on a salaried basis while the assembly line workers are paid by the hour. Unlike the hourly paid employees, Canjura does not punch a time clock. Canjura's hourly rate of pay (\$8 per hour) is also higher than the highest paid assembly line worker (\$7 per hour). Canjura took paid vacation before that benefit was made available to hourly paid employees. Canjura also received an "award bonus" given to two other employees (the supervisor of the shipping and testing department and an engineer). Finally, if Canjura is not a statutory supervisor, then approximately 26 assembly line employees work 75% of the time without supervision and are directly supervised by the President the 25% of his time that he spends in the warehouse. *See NLRB v. Joe B. Goods, Inc.*, 953 F.2d 287, 295 (7th Cir. 1992) (supervisor status shown by fact that individual "did not punch a timeclock, but instead wrote his own time on the timecard"); *Monotech of*

Mississippi v. NLRB, 876 F.2d 514, 517 (5th Cir. 1989) (secondary indicia include “attending management meetings” and “receiving a higher wage than other unit employees”); *Peoples Service Drug Stores Inc. v. NLRB*, 375 F.2d 551, 554 (6th Cir. 1967) (food managers were supervisors where they received “ten to twenty cents more an hour than other employees and participated in a special bonus plan not available to those employees).

The Union’s unsupported argument that Canjura’s performance of unit work creates a community of interest with unit employees that weighs against a finding that she is a supervisor, is unpersuasive. “The fact that individuals may spend ‘much of their time performing duties similar to those performed by others within their respective areas’ does not preclude a finding of supervisory status where the (disputed) individuals also schedule and assign work and move employees from one job to another.” *A.J. Schmidt Co.*, 269 NLRB 579, 585 (1984) (citing *Liquid Transporters*, 250 NLRB 1421, 1425 (1980)).

For the reasons set forth above, I find that Blanca Canjura is a supervisor as defined in §2(11) of the Act. Accordingly, I shall exclude her from the unit.

There are approximately 36 employees in the unit.

3/ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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